Supreme Court, U.S.
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NO. 06-110

In The

SUPREME COURT OF THE UNITED STATES

SATISH SHETTY,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

On Petition For Writ Of Certiorari To The United States Court of Appeals For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether government agents' requests, direction and encouragement of a private party to continue searching documents stolen by the private party, to utilize in the agents' criminal investigation and the subsequent use of the information by the agents, converts the private party into a government agent under the Fourth Amendment?

LIST OF PARTIES

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OPINIONS BELOW

On February 28, 2006, the United States Court of Appeals for the Ninth Circuit affirmed petitioner's conviction for one count of bank fraud, in violation of 18 U.S.C. section 1344, and one count of money laundering in violation of 18 U.S.C. section 1956, subdivision (a)(1)(A)(I), following his conditional guilty plea, and affirmed the district court's denial of his motion to suppress information obtained from business documents stolen by private parties and turned over to law enforcement agents. The court of appeals' Memorandum decision appears in Appendix A to this Petition. On April 20, 2006, the United States Court of Appeals for the Ninth Circuit denied petitioner's timely petition for panel rehearing and suggestion for rehearing en banc, which appears in Appendix B to the Petition.

BASIS OF JURISDICTION

The United States Court of Appeals for the Ninth Circuit denied Petitioner's appeal from his conviction and the district court's denial of his motion to suppress evidence followed by a conditional guilty plea, and his petition for panel rehearing and suggestion for rehearing en banc on April 20, 2006. This Court's jurisdiction is invoked under 28 U.S.C. §1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Fourth Amendment, is set forth in Appendix C.

STATEMENT OF THE CASE AND FACTS

The United States Court of Appeals for the Ninth Circuit, concluded that petitioner failed to show that the government acquiesced in the theft of his business documents and that the government's mere use of documents improperly obtained by a private party does not offend the Fourth Amendment.

Rejecting petitioner's contention that while law enforcement did not know of the private party's theft and search of petitioner's documents in advance, the government's subsequent requests, direction, and encouragement of a continuing search of the stolen documents tacitly approved whatever measures the private party took to obtain the documents thereby converting the private party into a government agent for Fourth Amendment purposes, the Ninth Circuit affirmed the district court's denial of petitioner's motion to suppress evidence on the ground that once a private search is completed, the subsequent involvement of government agents does not retroactively transform the original intrusion into a government search.

Initially, petitioner was indicted with Joy Langford on nine counts in the Central District of California. CR 1. On November 26, 2003, the Government obtained a First Superceding nine count indictment against petitioner and Langford, alleging that petitioner and Langford devised and participated in a scheme to defraud mortgage lenders and to obtain money and property by means of false pretenses through the preparation of fraudulent loan applications submitted to Pan American Bank, causing Pan American Bank to disburse loan proceeds in the amounts listed in Counts 1 through 5, in violation of 18 U.S.C. Section 1344.

Counts 6 through 9 of the First Superseding Indictment alleged that petitioner and Langford conducted financial transactions involving the proceeds of specified unlawful activity, namely, bank fraud, with the intent to promote the carrying on of bank fraud in that petitioner and Langford (in Count 9 only), and others, issued the checks as reimbursement for down payments in violation of 18 U.S.C. Section 1956 subdivision (a)(1)(A)(i). Petitioner entered pleas of not guilty on all counts. CR 60.

On January 29, 2004, petitioner filed a motion to suppress evidence. CR 70; ER 7. Following a hearing on petitioner's motion to suppress evidence, the district court denied said motion. CR 91; 3/8/04 RT 60-64; ER 240-244.

On April 8, 2004, petitioner signed a plea agreement and entered his plea of guilty to Counts 2 and 8 of the First Superseding Indictment, reserving the right to appeal the denial of his motion to suppress evidence. CR 94, 95. On December 20, 2004, the District Court found petitioner guilty of bank fraud in violation of 18 U.S.C. Section 1344 as to Count 2, and money-laundering in violation of 18 U.S.C. Section 1956 subdivision (a)(1)(A)(i) as to Count 8. The Court ordered that petitioner be committed to the custody of the Bureau of Prisons for a term of 15 months on each of Counts 2 and 8 of the First Superseding Indictment, to be served concurrently, to pay restitution to Pan American Bank in the amount of $37,478 pursuant to 18 U.S.C. Section 3663A; pay a special assessment of $200; and upon release from imprisonment, placed on supervised release for a term of five years, consisting of five years on Count 2 and three years on Count 8, all such terms to run concurrently under various terms and conditions. CR 122, pp. 1-3; 12/20/04 RT

36-38; ER 245-247. On the government's motion the remaining counts were dismissed. 12/20/04 RT 40.

At 8:00 a.m. on December 21, 1999, petitioner's employee, Mirza Baig, who lived at 360 Ladera Street, Monterey Park, California, noticed that about 20 boxes of petitioner's miscellaneous business papers had been stolen from the Ladera Street residence. Petitioner owned the residence and stored his documents there. A police report was filed. Keith Hayhurst, petitioner's former employee, contacted FBI Special Agent George Olivo (SA Olivo) regarding petitioner, whom Hayhurst claimed was committing real estate fraud. Hayhurst told SA Olivo that during a time when he "had a legal right" to be in petitioner's residence doing construction work, he had "helped himself" to some of petitioner's documents that he believed would shed light on petitioner's crimes. 2/26/04 RT 12-13.

Hayhurst told SA Olivo that he had "tons of evidence" or "a whole lot of evidence" against petitioner. 2/26/04 RT 9, 2/23/04 RT 25. Hayhurst wanted the FBI to investigate petitioner. Hayhurst was concerned about protecting himself from petitioner. 2/26/04 RT 15. Hayhurst had two telephone calls with SA Olivo about petitioner, one prior to December 21, 1999, the date of the burglary, and one call after. 2/23/04 RT 32.

In January 2000, Hayhurst was contacted by Detective Kim of the Monterey Park Police and questioned about the theft of petitioner's documents. Hayhurst told Detective Kim that he was working with the FBI on petitioner's case, and that he was, or was going to become, an informant for the FBI. 2/23/04 RT 13-18. Hayhurst also told Kim that he

believed petitioner was involved in fraudulent real estate dealings. *Id.*

When Hayhurst did not hear back from the FBI, he and Anthony "Tony" Mir, another one of petitioner's former employees, went to the Internal Revenue Service (IRS) on April 17, 2000. They met with IRS Agents Brian Campbell (Agent Campbell) and Michael Morris (Agent Morris). 2/23/04 RT 29, 33-36. Hayhurst had asked Mir for help and Mir had previously given him a 12-page document, which was turned over to the IRS at the meeting. 2/23/04 RT 26, 30.

Neither Mir nor Hayhurst were employees or roommates of petitioner during the period of time they met with the IRS agents. However, they continued to turn over detailed documents and information related to petitioner's business. 3/8/04 RT 33. Among the documents turned over by Mir and Hayhurst at the initial meeting were petitioner's credit report and an internet profile of petitioner's judgments and liens both obtained from Hayhurst. *Id.* 34-35.

The relationship between the IRS and Hayhurst and Mir continued for several months. As of June 9, 2000, Agent Campbell became aware that Hayhurst was allegedly involved in the theft of petitioner's documents. 3/1/04 RT 25. He checked the Treasury Enforcement Communications System and learned that burglary charges had been filed against Hayhurst. He placed a call to Monterey Park Police Detective Kim. 3/1/04 RT 26. On June 13, 2000, Detective Kim told Agent Campbell that he believed Hayhurst was involved in the theft of petitioner's documents from the Ladera residence. 3/1/04 RT 28.

Agent Morris acknowledged that as of June 9, 2000, he was also aware that there was an allegation by a police officer that Hayhurst had stolen documents from petitioner during a time that Hayhurst was providing Agent Morris with specific information as to how petitioner conducted real estate transactions. 2/26/04 RT 36. In a June 15, 2000 interview, Hayhurst related to Agents Morris and Campbell that about the same time the records were stolen from petitioner's Monterey Park residence, Hayhurst had been demanding $38,000 from petitioner. 2/26/04 RT 37-40. It occurred to Agent Morris that the theft of records by Hayhurst regarding petitioner might relate to the IRS case. *Id.* 43.

Agent Campbell also believed that the stolen documents could bear on the information Hayhurst was providing to law enforcement about petitioner. He was concerned that the burglary allegation could affect the ongoing investigation of petitioner. Agent Campbell did not want to have stolen documents provided to him because he "just knew that it would come back and bite" him at a suppression hearing. 3/1/04 RT 29-30. Knowing this, he continued to accept the documents from Hayhurst and Mir. 3/1/04 RT 43-45, 47, 51-54.

On June 20, 2000, Detective Kim and Agent Campbell spoke again. This time Detective Kim advised Agent Campbell that there was an arrest warrant for Hayhurst, based on allegations that he had stolen petitioner's business records. 3/1/04 RT 32. Because it was not a federal warrant, Agent Campbell did not see a need to arrest Hayhurst or to assist Detective Kim. 3/1/04 RT 32.

On June 26, 2000, Agent Campbell met with Hayhurst at the hospital where Hayhurst had been admitted for hernia

surgery. 3/1/04 RT 35. Between June 20 and June 26 Agent Campbell had made no attempt to contact Hayhurst about the outstanding warrant. 3/1/04 RT 35. Agent Campbell did not advise Hayhurst of the outstanding arrest warrant until he completed an extensive debriefing of Hayhurst regarding petitioner's real estate business. 3/1/04 RT 37-38.

The next day, a week after learning of the warrant, Agent Campbell contacted Detective Kim and left him a voicemail message advising him that he had spoken to Hayhurst and that Hayhurst would "turn himself in shortly." 3/1/04 RT 38. Two weeks after the hospital interview, Hayhurst had still not surrendered. He spoke with Agent Campbell and told Campbell that he had been charged with extortion and burglary and that his bail was $70,000. Hayhurst admitted to Agent Campbell that he "probably will not turn himself in" because he did not have the bail money. 3/1/04 RT 40. At that time, Agent Campbell noted in his report that Hayhurst was "still working on getting documents ready to provide" to him. 3/1/04 RT 42. Notwithstanding Hayhurst's fugitive status, Agent Campbell made no attempt to assist local law enforcement with Hayhurst's arrest and did not stop requesting or receiving information from Hayhurst. *Id.*

Even though Agent Campbell admitted that he knew that the arrest warrant related to the issue of petitioner's stolen real estate documents and that the IRS was investigating petitioner's real estate business based on information from Hayhurst and Mir, he maintained at the suppression hearing that he did not believe the documents he received from Hayhurst and Mir were stolen. 3/1/04 RT 41. On July 6, 2000, Agent Campbell was still waiting for Hayhurst to deliver additional documents to Agent Morris and himself.

3/1/04 RT 43. On July 26, 2000, over six months after the theft of the records, Hayhurst provided Agent Campbell with additional business records related to petitioner's business, including petitioner's seminar materials and copies of cashiers checks. 3/1/04 RT 45.

In Agent Campbell's August 1, 2000 report, reference is made to receiving more detailed information from Mir, including information about petitioner's immigration status, and details about the purchase of his house. 3/1/04 RT 52; ER 71-72. In a report dated August 28, 2000, Agent Campbell acknowledged receiving bank deposit slips belonging to petitioner together with other information likely obtained from looking at documents. *Id.* Mir also faxed Agent Campbell petitioner's mortgage loan statement on another property. *Id.* at 53; ER 74. These documents were provided even though Mir did not reside with petitioner in 2000. Mir's explanation was that he inadvertently took the mortgage documents from petitioner when he moved out, but that he had not discovered them until he unpacked his boxes many months later. 3/8/04 RT 28-29.

At the suppression hearing, Mir identified a 12-page summary list that he turned over to the IRS on April 17, 2000 as a list provided to him to collect rent. 3/8/04 RT 22-23. Mir also testified that it came into his possession in September 1999. 3/8/04 RT 23; AOB Defense "B", page 50; ER 84. Mir identified a separate list with the names of properties; he received the list from "Mr. Dawood" in early 2000. 3/8/04 RT 24; AOB Defense "B", page 49; ER 83. Mir stated that the rental receipt books came into his possession when he started collecting rent in September 1999, after it was transferred to him from Mirza Baig. 3/8/04 RT

25. Mir did not recall where the list of petitioner's corporations came from but believed he received it from "Mr. Dawood". 3/8/04 RT 26. Mir stated that he received Vazquez' 1099 form from Vazquez in April 2000. 3/8/04 RT 26-27. He claimed the deposit slips from the Beverly Hills property were obtained by Mir when he deposited rental income into petitioner's accounts. Mir said he obtained the deposit slips from Mirza Baig. 3/8/04 RT 27-28. Mir was not aware of any financial documents listing the assets and liabilities of petitioner, a document also provided to the IRS by either Hayhurst or Mir. 3/8/04 RT 29-30.

Hayhurst was ultimately arrested for the December 21, 1999, theft of petitioner's business documents from petitioner's residence on Ladera Street. On January 17, 2001, over defense objection, SA Olivo testified for the prosecution at Hayhurst's state trial. CR 72, Exhibit G to Government's Opposition to the Defendant's Motion to Suppress, p. 66; ER 26. SA Olivo's testimony that Hayhurst admitted taking documents from petitioner was consistent with his testimony at the suppression hearing. 2/26/04 RT 12-13; CR 72, Exhibit G at pp. 71-72; ER 31-32. Hayhurst ultimately pled guilty to a misdemeanor count of attempted extortion. CR 70, ER 22.

On February 28, 2006, the United States Court of Appeals for the Ninth Circuit affirmed the district court's denial of petitioner's motion to suppress evidence from business documents obtained by private parties and turned over to law enforcement agents. App. A p. A-3.

REASONS FOR GRANTING THE WRIT

I. Certiorari Should Be Granted to Determine Whether Government Agents' Requests, Direction and Encouragement of Searches by a Private Party of Documents Stolen by the Private Party to Utilize in the Agents' Criminal Investigation and the Subsequent Use of the Information by the Agents Converts the Private Party into a Government Agent under the Fourth Amendment.

Petitioner Shetty respectfully prays that a Writ of Certiorari issue to determine whether government agents' requests, direction, and encouragement of a private party to continue to search documents stolen by the private party to utilize in the agents' criminal investigation against petitioner and the agents subsequent use and exploitation of information procured from the stolen documents, tacitly approved whatever measures the private party took to obtain the documents thereby converting the private party into a government agent for Fourth Amendment purposes. This significant national question, regarding the application of the Fourth Amendment to search and seizures by private parties acting as instruments or agents of the government, has resulted in a split between the Second, Seventh and Ninth Circuits.[1/]

The Fourth Amendment protects against unreasonable searches and seizures by Government officials and those

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[1/] *United States v. Sherwin,* 539 F.2d 1, 6 (9th Cir.1976) (en banc); *United States v. Knoll,* 16 F.3d 1313 (2nd Cir. 1994); *Knoll Associates, Inc. v. Federal Trade Commission,* 397 F.2d 530 (7th Cir.1968).

private individuals acting as "instrument[s] or agent[s]" of the Government. *See* U.S. Const. amend. IV; *Coolidge v. New Hampshire,* 403 U.S. 443, 487, 91 S.Ct. 2022 (1971). The Fourth Amendment limits searches conducted by the government, not by a private party, *unless* the private party acts as an "instrument or agent" of the government. *Walter v. United States*, 447 U.S. 649, 656, 100 S. Ct. 2395 (1980). A search by a private party not acting as an agent of the government does not implicate the Fourth Amendment. *United States v. Jacobsen,* 466 U.S. 109, 113, 104 S.Ct. 1652, 1656 (1984). *See also Burdeau v. McDowell,* 256 U.S. 465, 475, 41 S.Ct. 574 (1921). Whether a private party is acting as an agent of the government depends on the degree of the government's participation in the private party's activities. *Skinner v. Railway Labor Executives' Ass'n,* 489 U.S. 602, 614, 109 S.Ct. 1402, 1411 (1989) (the fact that the government does not compel the private party to search does not establish that the search is private for purposes of the Fourth Amendment).

Petitioner maintains that United States Internal Revenue (IRS) agents aided, acquiesced in and exploited the theft of his personal business records from his residence, when, following their theft, IRS Agents Campbell and Morris encouraged Hayhurst and Mir to conduct several additional searches of the stolen business records so that documentary evidence and summaries could be provided to the government. But for the government's actions, the search of the stolen records would not have continued.

The record in this case clearly establishes that IRS Agents Morris and Campbell continued to request that Hayhurst and Mir provide them with information about petitioner's

business affairs long after the initial theft of the documents. For instance, a July 6, 2000 memo prepared by Agent Campbell states that Hayhurst "*is still working on getting documents ready to provide Special Agent Campbell.*" 3/1/04 RT 42. This memo was prepared several weeks after the government learned that Hayhurst was being sought by local law enforcement for the theft of petitioner's documents. Agent Campbell also details a number of documents provided by Hayhurst and Mir on April 17, 2000, as well as in July and August 2000 and through 2000, including blank deposit slips for petitioner's business, a mortgage loan statement for the La Barca residence, additional rental receipt books, and two binders containing seminar materials and cashier's checks. 3/1/04 RT 44-49, 51-54.

During cross-examination at the suppression hearing, Agent Campbell stated that from April 17, 2000 onward until February 2002, he received documents periodically from Mir. He also received documents from Hayhurst until on or about July 26, 2000. 3/1/04 RT 67-68. Agent Morris related that on April 17, 2000 he was initially given a number of documents by Hayhurst and Mir, including a receipt book, computer generated documents and a couple of handwritten documents. 2/26/04 RT 29-30.

In *Lustig v. United States*, this Court noted that "a search is a search by a federal official if he had a hand in it" and that "[s]o long as he was in it before the object of the search was completely accomplished, he must be deemed to have participated in it." 338 U.S. 74, 78-79, 69 S.Ct. 1372, 1374, 93 L.Ed. 1819 (1949) (plurality opinion). Here, the object of the search was to provide documents to the government. This objective was not completed upon the burglary of petitioner's

residence, but continued over time at the direction of the IRS. The heart of the search was dependant on the government's request for additional materials it knew or should have known were stolen.

Even after the agents learned that Hayhurst was going to be arrested for the theft of petitioner's documents, Hayhurst and Mir were encouraged and requested to continue to search for evidence of petitioner's wrongdoing. Documents were thereafter provided piecemeal by Hayhurst to the government. The agents' request for this information during a time that they knew Hayhurst was being sought by law enforcement constituted tacit approval by the agents for Hayhurst to obtain the documents by any means possible and made the government a participant in the illegal searches of petitioner's business records. The government thereafter utilized documents and information it knew was stolen. These documents should have been suppressed by the district court.

In affirming the district court's denial of petitioner's motion to suppress evidence, the Ninth Circuit stated,

> The government's mere use of documents improperly obtained by a private party does not offend the Fourth Amendment. Indeed, this court has held that "'once a private search is completed, the subsequent involvement of government agents does not retroactively transform the original intrusion into a government search.'" *United States v. Veatch,* 674 F.2d 1217, 1222 (9th Cir.1982) (quoting *United States v. Sherwin,* 539 F.2d 1, 6 (9th Cir.1976) (en banc)).

Here, the search of petitioner's stolen documents continued after the initial theft based on the IRS agent's request for additional documents from Hayhurst and Mir. Therefore, despite the agents' lack of knowledge prior to the theft, the agents subsequent requests, direction and use of the documents converted the private parties' subsequent actions into governmental action by the government agents' tacit approval of whatever measures the private parties took to produce the information the agents wanted and expanded the private search of petitioner's documents in violation of the Fourth Amendment. The Ninth Circuit's finding that the private parties' actions were not transformed by the agent's involvement into a government search conflicts with the holdings of the Second and Seventh Circuits on similar facts.

In *United States v. Knoll,* 16 F.3d 1313 (2nd Cir. 1994), the Second Circuit addressed very similar facts to those presented in this case. In *Knoll*, private parties burglarized the office of attorney-defendant Knoll and took boxes of documents. They examined some of the documents and took them to a Assistant United States Attorney in hopes of obtaining leniency. The AUSA was aware of the burglary but nonetheless "tacitly suggested and condoned further searching . . . , through the stolen documents." *Id.* at 1319-1320. The AUSA testified that he told the private party "he would have to 'get me more information,' and 'you've got to turn more over. If there's stuff out there, you've got to turn it over.'" *Id.* at 1320. When the AUSA made these statements to the private party, he was aware there had been a burglary. As in this case, the private party had made it "abundantly clear" to the AUSA "that there were a lot of documents that were available to him." *Id.* at 1320.

The *Knoll* Court observed that it was not clear from the record that all the files had necessarily been opened and concluded that the search may not have been completed until the private parties went through the stolen files upon the government agents' request to find the material to be turned over to the FBI to be used against the defendants. *Id.* Noting that a private party acting as a government agent may not expand upon a private search without running afoul of the Fourth Amendment under *Walter v. United States*, *supra*, the Second Circuit found that the private parties may have been acting as the agents of the government given that the AUSA "directed their actions and tacitly approved of whatever measures they took to produce information he wanted from the contents of the files." *Id.* The *Knoll* Court reasoned:

> Although the applicable legal standard looks to whether the person searching and seizing was an agent of the government, see, e.g., *United States v. Walther*, 652 F.2d 788, 791 (9th Cir.1981), the standard does not take a solely *ex ante* perspective. The Supreme Court acknowledged in *Lustig v. United States* that ... "[s]o long as [a federal official] was in it before the object of the search was completely accomplished, he must be deemed to have participated in it." 338 U.S. 74, 78-79, 69 S.Ct. 1372, 1374, 93 L.Ed. 1819 (1949) (plurality opinion). . . . .**the critical issue is the point in time when the object of the search has been completed**. . . . Although here the burglary may have been accomplished, that is, the boxes of documents had been stolen from Knoll's office before the government knew of the burglary, **the search itself may not have been complete until Devany,** upon . . . ultimately AUSA Bruce's request, **went through all**

> **the stolen files and listened to the tapes to find the material to be turned over to the FBI to be used against Knoll and Gleave**. At some point in the ongoing search, **Ernie and Devany may have been acting as agents of the government given that AUSA Bruce directed their actions and tacitly approved of whatever measures they took to produce information he wanted from the contents of the files**.

Knoll, *supra*, at 1320 [Emphasis added.]

Here, at the direction of IRS Agents Campbell and Morris, Hayhurst and Mir went through the "tons" of stolen evidence, evidence Hayhust admitted to FBI SA Olivo he had stolen.[2/] Agent Campbell and Agent Morris directed their actions and tacitly approved of whatever measures they took to produce the information, even if it meant that Agent Campbell would assist Hayhurst in remaining a fugitive from justice.

The government's encouragement and request for that additional information and documents was an unlawful expansion of the earlier private search and, therefore, constituted an illegal warrantless search by the government, condemned by the protection afforded individuals under the Fourth Amendment against unreasonable government

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[2/] Hayhurst's admission to SA Olivo establishes that at some time near the time of the Ladera burglary, he had "helped himself" to petitioner's documents. 2/26/04 RT 13. The theft left him with "tons" of documents. *Id.*

searches and seizures. *See Lustig v. United States, supra,* and *United States v. Knoll, supra.*

The agents also utilized the information gleaned by Hayhurst and Mir from petitioner's purloined files in violation of petitioner's rights under the Fourth Amendment under the test used by the Seventh Circuit. In *Knoll Associates, Inc. v. Federal Trade Commission*, 397 F.2d 530 (7th Cir. 1969), a Knoll Associates employee (Prosser) stole corporation documents and provided them to the FTC. The Seventh Circuit held:

> The action of the Commission in utilizing the fruits of the misconduct of Prosser violated rights of the petitioner protected by the fourth amendment to the federal constitution. The undisputed evidence shows that Prosser stole the documents for the purpose of assisting the Commission counsel in the prosecution of the proceeding then pending, and the records shows that the Commission, by it use of the documents knowingly gave its approval to Prosser's unlawful act. *Id.* at 533.

That is precisely what occurred in this case. The government utilized the information provided by Hayhurst and his co-hort and benefitted by their illegal activity.

Noting that "[t]he government may not do, through a private individual, that which it is otherwise forbidden to do," the Seventh Circuit in *United States v. Feffer*, 831 F.2d 734, 736-737 (7th Cir. 1987) explained the significance of the facts in *Knoll Associates*:

> In *Knoll Associates, Inc. v. Federal Trade Commission,* 397 F.2d 530 (7th Cir.1968)..., we required the suppression of documents stolen by a disgruntled employee and furnished to the FTC for its use in a pending prosecution against the employer. Significant there was the fact that the employee had taken the documents for the purpose of furnishing them to the FTC and the fact that the FTC had knowingly approved of the employee's conduct by accepting the documents. *See also United States v. Newton,* 510 F.2d 1149 (7th Cir.1975) (absence of legitimate reason to search luggage to determine ownership where airline employee already knew owner's identity, combined with government involvement, made search governmental in nature).

Based on the facts found by the district court in *Feffer*, the Seventh Circuit observed that "[a]lthough the IRS agents' conduct came close to being improper," it upheld the district court finding that "it did not come close enough." *Id.* at 739. *Feffer* distinguished *Knoll Associates* by the fact that the employee of the corporation who gave the documents to IRS agents and then later provided additional documents, the later events were not governmental because the employee's motive or purpose in continuing the search was independent of government involvement and the agent "never requested any documents"-- it was not sufficient that the IRS agent "knew or should have known that [the employee] would be producing additional documents." *Id.* at 739-740.

In petitioner's case, it is undisputed that the IRS agents specifically asked for additional documents from Hayhurst and Mir to be used in the agents' investigation of petitioner

and the motive and purpose of Hayhurst and Mir in providing the documents to the IRS agents was to further the criminal investigation. Hayhurst indicated to Agent Morris that he wanted a financial reward for providing the information regarding petitioner to the IRS. 2/23/04 RT 34; 2/26/04 RT 26-28. Here, the IRS agents' conduct in requesting, accepting and using the additional documents convert Hayhurst and Mir into instruments or agents of the government under the standard employed by the Seventh Circuit in applying the Fourth Amendment to searches and seizures by private parties.

Thus, there were two separate violations of the Fourth Amendment by the government. First, by directing and participating in the receipt of additional information from the stolen documents. This was an unlawful expansion of the earlier private party search and, therefore, constitutes an illegal warrantless search by the government. *See Lustig v. United States*, *supra*, and *United States v. Knoll*, *supra*. Second, by the government utilizing the fruits of the information derived from the stolen documents. *See Knoll Associates, Inc. v. Federal Trade Commission*, *supra*.

CONCLUSION

For the reasons set forth above, a Writ of Certiorari should issue to review the decision of the United States Court of Appeals for the Ninth Circuit. This Petition for Writ of Certiorari presents important questions impacting searches and seizures by private parties acting as instruments or agents of the government, and a criminal defendant's rights under the Fourth Amendment to the Constitution. Certiorari should be granted to resolve these important questions.

Dated: July 18, 2006

Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

No. 05-50011

UNITED STATES OF AMERICA, Plaintiff-Appellee,

vs.

SATISH SHETTY, Defendant-Appellant.

D.C. No. CR-03- 00070-DOC

Appeal from the United States District Court for the Central District of California, David O. Carter, District Judge, Presiding.

Argued and Submitted Feb. 15, 2006.
Filed Feb. 28, 2006.

Before: B. FLETCHER and CALLAHAN, Circuit Judges, and ENGLAND, District Judge [FN*]

FN* The Honorable Morrison C. England, Jr., United States District Judge for the Eastern District of California, sitting by designation.

MEMORANDUM [FN**]

FN** This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

Following his conditional guilty plea to one count of bank fraud, in violation of 18 U.S.C. § 1344, and one count of money laundering, in violation of 18 U.S.C. § 1956(a)(1)(A)(i), the appellant challenges the district court's denial of his motion to suppress evidence from certain business documents obtained by private parties and turned over to law enforcement agents. [FN1] He specifically contends that the private parties stole the documents and their actions constituted a governmental search in violation of the Fourth Amendment.

FN1. We do not give a full recitation of the facts because the parties are already familiar with them.

We review de novo the district court's denial of the appellant's suppression motion. *United States v. Crawford,* 372 F.3d 1048, 1053 (9th Cir.2004) (en banc). The district court's factual findings underlying the denial of the motion are reviewed for clear error. *United States v. Bynum,* 362 F.3d 574, 578 (9th Cir.2004). The appellant has the burden of establishing government involvement in a private search. *United States v. Snowadzki,* 723 F.2d 1427, 1429 (9th Cir.1984).

Here, even if we were to assume that the documents were stolen, the appellant has failed to show that the government acquiesced in the alleged theft. There is no evidence in the record that the government was in any way

involved with or had prior knowledge of any search conducted by the private parties. The government's mere use of documents improperly obtained by a private party does not offend the Fourth Amendment. Indeed, this court has held that " 'once a private search is completed, the subsequent involvement of government agents does not retroactively transform the original intrusion into a government search.' " *United States v. Veatch,* 674 F.2d 1217, 1222 (9th Cir.1982) (quoting *United States v. Sherwin,* 539 F.2d 1, 6 (9th Cir.1976) (en banc)). Accordingly, the appellant's conviction, sentence, and the denial of his suppression motion are **AFFIRMED.**

APPENDIX B

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

No. 05-50011

UNITED STATES OF AMERICA, Plaintiff-Appellee,

vs.

SATISH SHETTY, Defendant-Appellant.

D.C. No. CR-03- 00070-DOC

ORDER

Filed April 20, 2006

Before: B. FLETCHER and CALLAHAN, Circuit Judges, and ENGLAND, District Judge [FN*]

FN* The Honorable Morrison C. England, Jr., United States District Judge for the Eastern District of California, sitting by designation.

The appellant's petition for panel rehearing and suggestion for rehearing en banc are hereby DENIED.

SO ORDERED.

APPENDIX C

United States Constitution, Fourth Amendment

The right of the People to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrant shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.